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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JACQUELINE SCOTT CORLEY, MAGISTRATE JUDGE

WAYMO, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	NO. 3:17-cv-00939-WHA
	)	
UBER TECHNOLOGIES, INC.;	)	
OTTO TRUCKING, LLC;	)	
OTTOMOTTO, LLC, et al.,	)	
	)	
Defendants.	)	San Francisco, California
_____	)	Thursday, July 20, 2017

**TRANSCRIPT OF OFFICIAL ELECTRONIC SOUND RECORDING**  
**OF PROCEEDINGS**

FTR 12:30 p.m. - 12:38 p.m. = 8 minutes

**APPEARANCES:**

For Plaintiff:	Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP 50 California Street, 22nd floor San Francisco, California 94111
BY:	<b>DAVID ANDREW PERLSON, ESQ.</b> <b>ANDREA ROBERTS, ESQ.</b> <b>JAMES DUBOIS JUDAH, ESQ.</b>
For Defendants:	Morrison & Foerster 425 Market Street San Francisco, California 94105-2482
BY:	<b>ARTURO J. GONZALEZ, ESQ.</b>

(Appearances continued on following page.)

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**APPEARANCES:** (cont.)

For Defendant Otto Trucking, LLC:

Goodwin Procter, LLP  
135 Commonwealth Drive  
Menlo Park, California 94025  
BY: **HONG-AH VU, ESQ.**

For Defendants: Boies, Schiller & Flexner  
401 Wilshire Boulevard, Suite 850  
Santa Monica, California 90401  
BY: **EDWARD TAKASHIMA, ESQ.**

ALSO PRESENT: John Cooper, Special Master

(ALL PARTICIPANTS APPEARED BY TELEPHONE CONFERENCE.)

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1 Thursday, July 20, 2017

2 12:30 p.m.

3 P R O C E E D I N G S

4 **THE CLERK:** Hi, is everyone present?

5 **MR. PERLSON:** This is David Perlson from Quinn  
6 Emanuel.

7 **THE CLERK:** Okay, hold on one second. I just want  
8 to call the case.

9 Now calling civil action 17-939, Waymo, LLC versus  
10 Uber Technologies, Inc., et al.

11 Counsel, please state your appearances for the  
12 record.

13 **MR. PERLSON:** This is David Perlson from Quinn  
14 Emanuel on behalf of plaintiff Waymo.

15 **MR. GONZALEZ:** Arturo Gonzalez from Morrison &  
16 Foerster for Uber.

17 **MS. VU:** Hong-An Vu of Goodwin Procter, on behalf of  
18 Otto Trucking, LLC.

19 **MR. COOPER:** And this is John Cooper, Special  
20 Master.

21 **MR. TAKASHIMA:** This is Ed Takashima from Boies,  
22 Schiller & Flexner for Uber, Ottomoto.

23 **MS. ROBERTS:** This is Andrea Roberts from Quinn,  
24 Emanuel for plaintiff Waymo.

25 **THE COURT:** Okay, this Judge Corley. I believe that

1 may be everyone. Thanks for making yourselves available on  
2 short notice. I just thought this was a better or more quick  
3 way of addressing....

4 Did someone else just join us?

5 **MR. JUDAH:** James Judah. I apologize for being  
6 late. We were in a deposition. I just got out.

7 **THE COURT:** That's okay. All right, so let's start  
8 with, I guess, Mr. Gonzalez. With respect to the letter to  
9 Mr. Kalanick, what is the basis for any claim of privilege with  
10 respect to that letter?

11 **MR. GONZALEZ:** Well, your Honor, I don't think that  
12 we're making a claim of privilege. I think we're making a  
13 claim of relevance.

14 **THE COURT:** Okay, all right. So let me stop you  
15 there. Of course, as you know, that's not a reason for *in*  
16 *camera* review. I understand, though, that you might have  
17 concerns about the letter being misused, and under Rule 26(c),  
18 being concerned about, you know, for a protective order.

19 What I propose, then, the letter be -- I think there  
20 is -- it's relevant to a claim. Mr. Kalanick is, of course,  
21 central to this case, and -- but I would order that it be  
22 produced to Waymo under protective order; that should Waymo  
23 seek to file it in court, that it do so under seal, because  
24 I understand, from what we read in the press, we know the  
25 letter probably has mostly at least nothing to do with this

1 litigation and I don't think it would then be appropriate to  
2 use that. So that would be my proposal.

3 **MR. GONZALEZ:** Thank you, your Honor. We'll produce  
4 it attorneys' eyes only.

5 **THE COURT:** All right. Well, I don't know -- well,  
6 I guess that's fine, at this point.

7 Mr. Perlson, do you have any comments on that?

8 **MR. PERLSON:** I do, your Honor. We're certainly  
9 fine with them producing it attorneys' eyes only. If for some  
10 reason down the road we think there's a basis to challenge  
11 that, we'll raise that, according to the proper procedures.

12 **THE COURT:** Okay, all right, good.

13 All right, now, with respect to the depositions,  
14 Mr. Perlson, I think that may be an iterative process. I think  
15 why -- I think it's appropriate that you would take at least  
16 one depo. I don't know that you would need all three.

17 So who would you want to go first? And then what  
18 I would propose is after that, if you think you haven't gotten  
19 what you need, you'd have to make a showing as to why you need  
20 more.

21 **MR. PERLSON:** I think Mr. Gurley would be the one to  
22 take first.

23 **THE COURT:** Okay. All right. Perhaps first and  
24 only. So that would be my proposal there, Mr. Gonzalez.

25 **MR. GONZALEZ:** Understood, your Honor. We will

1 produce Mr. Gurley, that's you're willing, and you just made  
2 the argument I was going to make, which is, you ought to take  
3 one and that ought to answer whatever questions they have,  
4 especially when they see that the letter is almost completely  
5 unrelated to this case.

6 **THE COURT:** But there's issues other than the  
7 letter. I do think the reasons for entering the deal have some  
8 relevance, but I don't know why you need every board member.  
9 One probably could answer that.

10 All right, as with the others, his deposition will  
11 be limited to four hours, although I don't even know that they  
12 would need all that time, but.... Okay.

13 **MR. GONZALEZ:** That's fine, your Honor. We'll  
14 produce Mr. Gurley for up to four hours.

15 **THE COURT:** Okay. Now, the third area I do want to  
16 talk to you about, Mr. Gonzalez, is Mr. Kalanick's text  
17 messages. So as I understand it, has he produced all of the  
18 text messages on his phone that were from Mr. Levandowski to  
19 Mr. Kalanick?

20 **MR. GONZALEZ:** So -- boy, I want to be very careful,  
21 your Honor, because I don't want to say something that's  
22 inaccurate. What I can tell you is that I believe that all of  
23 the relevant text messages have been produced, either by  
24 Mr. Kalanick or by Mr. Levandowski --

25 **THE COURT:** Okay, I'm going to stop you -- I'm going

1 to stop you right there. As we all know, Mr. Levandowski has  
2 pled the Fifth and has withheld documents. It is not an  
3 acceptable response to the Court that something has been  
4 produced by Mr. Levandowski.

5 **MR. GONZALEZ:** Oh, I understand, your Honor.  
6 I just --

7 **THE COURT:** So what I -- yeah. So what I need to  
8 know --

9 **MR. GONZALEZ:** I was just -- that was prefatory to  
10 my next sentence.

11 **THE COURT:** Okay.

12 **MR. GONZALEZ:** My next sentence is that the  
13 consultants who recently found additional text messages are  
14 reviewing them as we speak, and the responsive messages will be  
15 produced before his deposition.

16 **THE COURT:** But as I understood your letter, it was  
17 referring -- seemed to be referring just to text messages from  
18 Mr. Kalanick to Mr. Levandowski. Therefore, from your letter  
19 I inferred that you, Uber, had already produced the text  
20 messages that Mr. Kalanick had on his phone from  
21 Mr. Levandowski to Mr. Kalanick.

22 **MR. GONZALEZ:** That's right, your Honor.

23 **THE COURT:** Okay. All right. So it's only the  
24 other way around.

25 **MR. GONZALEZ:** Right, and I just -- I didn't want to

1 get it wrong, which way had already been produced, but it's my  
2 understanding that what you just said is accurate, and that the  
3 other way of the two-way street is what's being reviewed now.

4 **THE COURT:** Okay. Is there anything to add to that,  
5 Mr. Perlson?

6 **MR. PERLSON:** I'm going to let Mr. Judah handle this  
7 one.

8 **MR. JUDAH:** Yes, your Honor. So a couple points of  
9 clarification.

10 One, we -- in terms of the text messages from  
11 Mr. Kalanick's phone that have been made available that are  
12 from Mr. Levandowski to Mr. Kalanick, the earliest one is  
13 February 2016 --

14 **THE COURT:** Okay, all right, stop there.

15 So Mr. Gonzalez, that is not the earliest message  
16 between them. So what's the deal with that?

17 **MR. GONZALEZ:** Your Honor, I don't know the answer  
18 to that question, but what I can tell you is that we didn't --  
19 we didn't draw some random line.

20 **THE COURT:** No, no, I believe you. I believe you  
21 have. So this is it. This evidence is highly relevant, and so  
22 I'm just going to let you know, so that Uber will do whatever  
23 it needs to take. If it needs to be that the phone is turned  
24 over to Waymo's forensic expert, it will be, all right? So all  
25 those text messages need to be turned over.



1           **MR. GONZALEZ:** Understood, your Honor.

2           **THE COURT:** And we're in the middle of July -- it's  
3 actually really late right now. I don't understand why it  
4 hasn't been produced now. So I'm just putting you on notice  
5 that all hands on deck, that stuff needs to be produced, and  
6 I don't understand why.

7           **MR. GONZALEZ:** I appreciate that.

8           **THE COURT:** Okay? All right.

9           **MR. GONZALEZ:** I appreciate that, your Honor. I'll  
10 look into it. I'm assuming that there's some reason why they  
11 haven't been, but --

12           **THE COURT:** Okay.

13           **MR. GONZALEZ:** -- message delivered.

14           **THE COURT:** Okay.

15           **MR. PERLSON:** Your Honor, this David Perlson.  
16 I know I just said I'll let Mr. Judah handle this, but just in  
17 relation to that specific point, I'll just note that, you know,  
18 Mr. Kalanick's deposition is a week from today, and we've been  
19 talking about these text messages for weeks and weeks.

20           **THE COURT:** Well, look, they will produce it all,  
21 enough in time in advance, or he will come back for his  
22 deposition.

23           **MR. PERLSON:** Thank you, your Honor.

24           **THE COURT:** You will start it and then it will come  
25 back. But Mr. Gonzalez understands that. He knows that.

1 That's why he said they would be produced in advance of his  
2 deposition.

3 Okay, thank you. I think that resolves both those  
4 letters.

5 **MR. GONZALEZ:** Your Honor, you're very efficient and  
6 productive, as usual.

7 **THE COURT:** I'm learning, I'm learning.

8 **MR. GONZALEZ:** And you've saving us the trip to the  
9 courthouse. I like these calls.

10 **THE COURT:** Okay, me too, me too. Okay, great.

11 **MR. GONZALEZ:** Thank you, your Honor very much.

12 **MR. PERLSON:** Thank you, your Honor.

13 **THE CLERK:** Court is in recess.

14 12:38 p.m.

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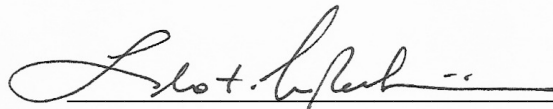
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I, Leo Mankiewicz, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.

 07/20/2017

Signature of Transcriber

Date